

REMARKS

1. An Office Action requiring Applicants to elect a single invention for prosecution on the merits was mailed January 21, 2009. Claims 7, 25-27 and 38-50 were last presented for examination. By the foregoing Amendments, claim 26 has been amended. Claims 7, 25-27, 49 and 50 have been cancelled, claims 47 and 48 have been withdrawn and no claims have been added. Thus, upon entry of this paper, claims 38-48 will remain pending in this application. Of these eleven (11) claims, one (1) claim (claims 38) is independent claims. In response to the Election/Restriction Requirement, Applicants submit this Response to Election/Restriction Requirement.

Restriction Requirement

2. The Examiner has required restriction between product and process claims. The Examiner alleged that the species listed do not relate to a single general inventive concept under PCT rule 13.1 because under PCT rule 13.2, the species lack the same or corresponding special technical features for the following reasons: the features common to all species (i.e., a combination of an elongate member and bioactive substance) do not make a contribution over the prior art, thus do not qualify as a “special technical feature”

Election of Species

3. The Examiner has required the election of species from each of the following five species as

- Species A: An implantable device having a sheath comprising a porous material with a bioactive substance;
- Species B: A drug delivery device comprising a biodegradable, biocompatible polymeric material;
- Species C: An implantable tissue-stimulating device comprising a delivery means spaced from the distal end of an elongate member and a chamber which acts as a leaching reservoir;

Species D: An implantable tissue-stimulating device comprising a delivery means spaced from the distal end of an elongate member and an additional reservoir with a pump; and

Species E: A method of delivering a bioactive substance.

Election

4. Applicants cancelled claims 7, 25-27, 49 and 50 in the above Amendments. Claims 38-48 remain pending in this application. These claims cover species C and D above, with Species C including claims 45-46 and Species D including claims 47 and 48. Claims 38-44 are generic.

5. In accordance with 37 CFR § 1.143 and MPEP 818.03(b), Applicants hereby elect, without traverse, the claims of Species C, namely, claims 45-46, and generic claims 38-44. Applicant withdrew claims 47 and 48 in the above Amendments.

Conclusion

6. In view of the foregoing, it is respectfully submitted that this application is in condition for allowance and favorable action is respectfully solicited.

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Respectfully submitted,

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